

§ 926.30 State-Federal cooperative agreement.

COOPERATIVE AGREEMENT

The State of Montana and the Department of the Interior enter into a State/Federal Cooperative Agreement to read as follows:

This is a Cooperative Agreement between the State of Montana, acting by and through the Governor (referred to as the "Governor") and the United States Department of the Interior, acting by and through the Secretary of the Interior (referred to as the "Secretary").

ARTICLE I: INTRODUCTION AND PURPOSE

A. This Agreement is authorized by section 523(c) of the Surface Mining Control and Reclamation Act (Federal Act), Pub. L. 95-87, 30 U.S.C. 1273(c), which allows a State with a permanent regulatory program approved under 30 U.S.C. 1253, to elect to enter into an agreement for the regulation and control of surface coal mining on Federal lands, and by the Montana Strip and Underground Mine Reclamation Act, Part 2, Chapter 4, Title 82, Montana Code Annotated (hereinafter "State Act"). This agreement provides for State regulations of surface coal mining and reclamation operations on Federal lands consistent with the State and Federal Acts and the Federal lands program.

B. The purpose of the Agreement is to (1) foster State-Federal cooperation in the regulation of surface coal mining and reclamation operations; (2) eliminate unnecessary intergovernmental overlap and duplication; and (3) provide effective regulation of surface coal mining operations on Federal lands and uniform regulation on all non-Indian lands.

ARTICLE II: EFFECTIVE DATE

This Cooperative Agreement is effective following signing by the Secretary and the Governor and upon final publication as rule-making in the FEDERAL REGISTER.¹ This Agreement shall remain in effect until terminated as provided in Article X.

ARTICLE III: SCOPE

This Agreement makes the laws, regulations, terms and conditions of Montana's permanent State program conditionally approved effective April 1, 1980, as amended, 30 CFR part 926 (State program) for the administration of the Federal Act, applicable to Federal lands within Montana except as otherwise stated in this Agreement, the Federal Act, 30 CFR 745.13, or other applicable laws.

¹See explanation of Article II at 46 FR 20983, Apr. 8, 1981.

ARTICLE IV: REQUIREMENTS FOR COOPERATIVE AGREEMENT

The Governor and the Secretary affirm that they will comply with all of the provisions of this Agreement and will continue to meet all conditions and requirements specified in this Article.

A. *Responsible Administrative Agency.* The Montana Department of State Lands (State Lands) is, and shall continue to be, the sole agency responsible for administering this Agreement on behalf of the Governor on Federal lands throughout the State. The Office of Surface Mining Reclamation and Enforcement (OSM) shall administer this Agreement on behalf of the Secretary, in accordance with the Regulations in 30 CFR Chapter VII.

B. *Authority of State Agency.* State Lands has and shall continue to have authority under State law to carry out this Agreement.

C. *Funds.* The State will devote adequate funds to the administration and enforcement on Federal lands in Montana of the requirements contained in the State program. If the State complies with the terms of this Agreement, and if necessary funds have been appropriated, OSM shall reimburse the State as provided in section 705(c) of the Federal Act and 30 CFR 735.16 for costs associated with carrying out responsibilities under this Agreement.

D. *Reports and Records.* State Lands shall make reports to the OSM Regional Director, Region V (Regional Director), containing information respecting its compliance with the terms of this Agreement as the Regional Director shall from time to time require pursuant to 30 CFR 745.12(c). State lands and the Secretary shall exchange, upon request, information developed under this Agreement. The Secretary shall provide State Lands with a copy of any approved evaluation report prepared concerning State administration and enforcement of this Agreement.

E. *Personnel.* State Lands shall have the necessary personnel to fully implement this Agreement in accordance with the provisions of the Federal and State Acts and the State Program.

F. *Equipment and Laboratories.* State Lands shall have access to equipment, laboratories, and facilities with which all inspections, investigations, studies, tests, and analyses can be performed and which are necessary to carry out the requirements of this Agreement.

G. *Permit Application Fees.* The amount of the fee accompanying an application for a permit shall be determined in accordance with Section 82-4-223(1) MCA. All permit fees shall be retained by the State and deposited in the General Fund. The Financial Status Report submitted pursuant to 30 CFR 725.23

shall include a report of the amount of permit application fees collected and attributable to Federal lands during the prior Federal fiscal year. This amount shall be deducted from the reimbursement to the State provided for in section 705(c) of the Federal Act, 30 CFR 735.16 and paragraph IV C of this Agreement.

ARTICLE V: POLICIES AND PROCEDURES: MINE PLAN REVIEW

A. Contents of Mining Plans and Permits. The Governor and the Secretary agree and hereby require that an operator on Federal lands shall submit an identical mining and reclamation plan and permit application or an application for a major modification to an approved mining plan and permit in an appropriate number of copies to State Lands and the Regional Director. The plan and permit application shall be in the form required by State Lands and include any supplemental forms required by the Secretary. The plan and application shall include the information required by, or necessary for, State Lands and the Secretary to make a determination of compliance with:

- (1) Section 82-4-222 MCA;
- (2) Title 26, Chapter 4, Subchapter 3, Administrative Rules of Montana;
- (3) Applicable terms and conditions of the Federal coal lease;
- (4) Applicable requirements of other Federal laws and regulations and the State Program.

A permit applicant on Federal lands in Montana shall satisfy the requirements of 30 CFR 741.12(b)(1) and 30 CFR 741.13(c) by submitting the information required by Montana.

B. Mine Plan Review Procedures. 1. State Lands shall assume primary responsibility for the analysis and review of applications required by 30 CFR 741.13 for surface coal mining reclamation permits on Federal lands in Montana. The Secretary shall, as requested, assist the State through the Regional Director in this analysis and review. The Secretary shall, in addition, evaluate the State's analysis and conclusions as necessary to independently determine whether the Secretary concurs in the State's decision.

2. State Lands will be the primary point of contact for operators regarding the processing of mining plans and permit applications. State Lands will be responsible for informing the applicant of all joint State-Federal determinations. State Lands shall send a copy of all correspondence with the applicant and any information received from the applicant which may have a bearing on decisions regarding the mine plan and permit application to the Regional Director. Except in exigent circumstances, OSM will not independently initiate contacts with applicants regarding completeness or deficiencies of plans

and applications with respect to matters which are properly within the jurisdiction of State Lands. The Secretary reserves the right to act independently of the State to carry out his responsibilities under laws other than the Federal Act and in instances of disagreement under the Federal Act. A copy of all independent correspondence with the applicant that may have a bearing on decisions regarding the mining plan and permit application shall be sent to the State.

3. The Regional Director is responsible to ensure that any information OSM receives concerning the application is sent to State Lands. The Regional Director and State Lands shall regularly coordinate with each other during the permit review process as needed.

4. The Regional Director shall be responsible for obtaining, on a timely basis, the views of all Federal agencies with jurisdiction or responsibility over a mine plan and permit application on Federal lands in Montana and for making these views known to State Lands. State Lands shall keep the Regional Director informed of findings during the review which bear on the responsibilities of other Federal agencies. The Regional Director shall take appropriate steps to facilitate discussions between State Lands and the concerned agencies wherever desirable to resolve issues or problems identified in the review.

5. Upon receipt of a mining plan and permit application, the Regional Director shall begin a review of apparent completeness of the application. The Regional Director shall identify a person as the OSM application manager. The OSM application manager shall serve as the primary point of contact between OSM and State Lands throughout the review process and shall be responsible for identifying areas of avoidable duplication of review and analysis, which shall be eliminated by the Regional Director. Not later than 90 days after an application has been received, OSM and State Lands shall meet to discuss the application and agree upon a work plan and schedule for the review of the application. The Regional Director shall also inform State Lands of any specific or general areas of concern which require special handling or analysis. State Lands shall inform the Regional Director where OSM assistance will be needed to perform any specific or general analysis or prepare any studies or similar work.

6. Compliance with Montana ARM 26.4.401 through .411 replaces the requirements of 30 CFR 741.18 except that all public meetings and hearings during the period prior to the initial permit decision shall be announced and conducted jointly.

7. Except as otherwise agreed for a specific mine plan and permit application, all environmental assessments and analyses to comply with NEPA and MEPA shall be conducted as authorized by 40 CFR 1506.2. To the extent allowed by Federal law and regulation, State Lands and OSM will cooperate to the fullest extent possible so that one Environmental Impact Statement and/or Environmental Assessment will be produced to comply with MEPA and NEPA for a proposed mining and reclamation plan. Such document will be prepared by State Lands if the Secretary provides the State with any necessary funding to complete the statement. The Secretary shall independently evaluate and approve the final document.

8. Unless the work plan provides otherwise, State Lands shall prepare a technical analysis, environmental analysis, and proposed written decision on the mining plan and permit application. Copies of drafts of these documents shall be sent to the Regional Director for his review and comment. The Regional Director shall independently evaluate the documents and inform State Lands within 30 days, unless a later date is mutually agreed upon, of any changes that should be made. State Lands shall consider the comments of the Regional Director and send a final technical analysis, environmental analysis, and proposed decision to the Regional Director for his written concurrence. The Regional Director shall have 30 days to act after receipt of State Lands' final technical analysis, environmental analysis, and proposed decision. If no further changes are required, the Regional Director shall proceed in accordance with 30 CFR 741.21 and inform State Lands of his action. In the event State Lands and the Regional Director cannot agree to the final actions to be taken by State Lands and the Department on the mining plan and permit application, the matter shall be referred to the Governor and Secretary for resolution.

9. Nothing in this agreement shall be construed to limit the Secretary's authority in 30 CFR 741.16, .17, and .21.

ARTICLE VI: INSPECTIONS

A. State Lands shall conduct inspections on Federal lands and prepare and file inspection reports in accordance with the approved State Program.

B. State Lands shall, within 15 days of conducting any inspection on Federal lands, file with the Regional Director an inspection report describing (1) the general conditions of the lands under the lease, permit, or license; (2) the manner in which the operations are being conducted; and (3) whether the operator is complying with applicable performance and reclamation requirements.

C. State Lands will be the point of contact and sole inspection authority in dealing with the operator concerning operations and com-

pliance with requirements covered by this Agreement, except as described in this Agreement and in the Secretary's regulations. Nothing in this Agreement shall prevent inspections by authorized Federal or State agencies for purposes other than those covered by this Agreement.

D. The Department may conduct any inspections necessary to comply with 30 CFR part 842 and its obligation under laws other than the Act.

E. The Regional Director shall give State Lands reasonable notice of his intent to conduct an inspection in order to provide State inspectors with an opportunity to join in the inspection. When Interior is responding to a citizen complaint of an imminent environmental danger or a threat to human health, pursuant to 30 CFR 842.11(b)(1)(ii)(C), it will contact the State no less than 24 hours prior to the Federal inspection, if practicable, to facilitate a joint Federal/State inspection. The Secretary reserves the right to conduct inspections without prior notice to State Lands if necessary to carry out his responsibilities under the Federal Act.

F. Personnel of the State and Interior shall be mutually available to serve as witnesses in enforcement actions taken by either party.

ARTICLE VII: ENFORCEMENT

A. State Lands shall take enforcement action on Federal lands in accordance with the State program and this Agreement.

B. During any joint inspection by Interior and State Lands, State Lands shall take enforcement action, including issuance of orders of cessation and notices of violation. Interior and State Lands shall consult prior to issuance of any decision to suspend or revoke a permit.

C. State Lands and OSM shall promptly notify each other of all violations of applicable laws, regulations, orders, approved mining and reclamation plans and permits subject to this Agreement and of all actions taken with respect to such violations.

D. This Agreement does not limit the Secretary's authority to enforce violations of Federal law or conditions of a permit.

ARTICLE VIII: BONDS

A. State Lands and the Regional Director shall require all operators on Federal lands to submit a single bond to cover the operator's responsibilities under the Federal Act and the State Program, payable to both the United States and State Lands. The bond shall be of sufficient amount to comply with the requirements of both State and Federal law, and release of the bond shall be conditioned upon compliance with all applicable requirements.

B. Prior to releasing the operator from an obligation required under the State Program

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under the bond for any Federal lands, State Lands shall obtain the consent of the Regional Director. State Lands shall also advise the Regional Director of adjustments to the bond.

ARTICLE IX: DESIGNATION OF LANDS AS UNSUITABLE

A. State Lands and the Regional Director shall cooperate with each other in the review and processing of petitions to designate lands as unsuitable for surface coal mining operations. When either agency receives a petition that could impact adjacent Federal or non-Federal lands, respectively, the agency shall (1) notify the other of its receipt and of the anticipated schedule for reaching a decision; and (2) request and fully consider data, information and views of the other.

B. The authority to designate Federal lands as unsuitable for mining is reserved to the Secretary or his designated representative. Petitions for designation shall be filed with the Regional Director and processed in accordance with 30 CFR part 769.

ARTICLE X: TERMINATION OF COOPERATIVE AGREEMENT

This Agreement may be terminated by the State or the Secretary under the provisions of 30 CFR 745.15.

ARTICLE XI: REINSTATEMENT OF COOPERATIVE AGREEMENT

If this Agreement has been terminated in whole or part, it may be reinstated under the provisions of 30 CFR 745.16.

ARTICLE XII: AMENDMENTS OF COOPERATIVE AGREEMENT

This Agreement may be amended by mutual agreement of Governor and Secretary in accordance with 30 CFR 745.14.

ARTICLE XIII: CHANGES IN STATE OR FEDERAL STANDARDS

A. Interior or the State may from time to time revise and promulgate new or revised performance or reclamation requirements or enforcement and administrative procedures. Interior and the State shall immediately inform each other of any proposed or final changes in their respective laws or regulations as provided in 30 CFR 732.17. Each party shall, if it determines it to be necessary to keep this Agreement in force, change or revise its respective laws or regulations. For changes which may be accomplished by rulemaking, each party shall have six months in which to make such changes, unless mutually extended. For changes which require legislative authorization, the State shall have until the close of its next regular legislative session in which to make the changes.

B. The State and Interior shall provide each other with copies of any changes to their respective laws, rules, regulations, and standards pertaining to the enforcement and administration of this Agreement.

ARTICLE XIV: CHANGES IN PERSONNEL AND ORGANIZATION

The State and Interior shall, consistent with 30 CFR part 745, advise each other of changes in the organization, structure, functions, duties and funds of the offices, departments, divisions and persons within their organizations which could affect administration and enforcement of this Agreement. Each shall promptly advise the other in writing of changes in key personnel, including the heads of a department or division, or changes in the functions or duties of persons occupying the principal offices within the structure of the program. The State and Interior shall advise each other in writing of changes in the location of offices, addresses, telephone number, and changes in the names, location, and telephone numbers of their respective mine inspectors and the area within the State for which such inspectors are responsible.

ARTICLE XV: RESERVATION OF RIGHTS

In accordance with 30 CFR 745.13, this Agreement shall not be construed as waiving or preventing the assertion of any rights that have not been expressly addressed in this Agreement that the State or the Secretary may have under other laws and regulations, including the Mineral Leasing Act, as amended, the Mineral Leasing Act for Acquired Lands, the Stockraising Homestead Act, the Surface Mining Control and Reclamation Act of 1977, the Federal Land Policy Management Act, the Constitution of the United States, the Constitution of the State, or State laws.

ARTICLE XVI: DEFINITIONS

Terms and phrases used in this Agreement which are defined in 30 CFR parts 700 and 701 shall be given the meanings set forth in said definitions.

Dated: February 6, 1981.

Ted Schwinden,
Governor of Montana.

Dated: January 19, 1981.

James A. Joseph,
Secretary of the Interior.

(Pub. L. 95-87, sec. 523(c), (30 U.S.C. 1273(c)))

[46 FR 20993, Apr. 8, 1981]

PART 931—NEW MEXICO

Sec.

931.1 Scope.

931.10 State Regulatory program approval.